

In the Matter of Merchant Mariner's Document No. Z-414918-R
Issued to: CLYDE E. LEWELYN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CLYDE E. LEWELYN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 27 October, 1952, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-414918-R issued to Clyde E. Lewelyn upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Quartermaster on board the American SS ALCOA CORSAIR under authority of the document above described, on or about 23 and 24 October, 1952, he wrongfully had in his possession certain narcotics; to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of five U. S. Customs employees and one employee of the U. S. Department of Agriculture.

In defense, Appellant testified under oath in his own behalf. He stated that he has never seen or used marijuana; that he did not know how marijuana got in his clothes; and that he had loaned different articles of clothing to a former shipmate but Appellant did not think that this seaman used marijuana.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-414918-R and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant was not given reasonable notice of hearing; wrongful possession was not proved; adverse character testimony was admitted; Appellant was not apprised of the nature of the alleged offense; and Appellant has been deprived of a means of livelihood and requests leniency.

APPEARANCES: James J. Grevemberg, Esquire, of New Orleans, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 23 and 24 October, 1952, Appellant was serving as Quartermaster on board the American SS ALCOA CORSAIR and acting under authority of his Merchant Mariner's Document No. Z-414918-R while the ship was in the port of New Orleans, Louisiana.

During a routine search of the ship by U. S. Customs authorities on 23 October, 1952, Port Patrol Officer Beatson found two seeds and fragments of vegetable matter, which appeared to be marijuana, in a pocket of a tweed coat located in Appellant's open locker. Subsequent chemical and microscopic tests by Chemist McCombs, at the Customs Laboratory, disclosed that the two seeds were marijuana and that the fragments were a mixture of tobacco and marijuana leaves and stems which constituted a strong form of marijuana. The weight of this vegetable matter does not appear in the record.

On 24 October, 1952, Customs Agent Crawford searched the clothing in Appellant's locker and found a substance, which resembled tobacco, in a grey flannel coat. Chemist McCombs determined by analysis that this one grain sample of vegetable matter included three fragments of marijuana leaves.

Later on 24 October, 1952, Appellant was questioned and searched in the office of Customs Agent McClendon. Appellant admitted ownership of the two coats in which marijuana had been found and stated that on different occasions he had loaned his clothes. Agent McClendon removed the vegetable matter from the two side pockets of the trousers which Appellant was wearing. Tests conducted by Chemist McCombs disclosed that this two-grain sample included two fragments of marijuana and a few fragments of tobacco. No additional marijuana could be found on Appellant's person or among his other belongings.

OPINION

I agree with the Examiner's statement that Appellant has not satisfactorily explained the presence of marijuana in three separate pieces of clothing which belonged to Appellant. Although the quantity of marijuana was small, there was a sufficient amount to arouse the suspicion of three different Customs employees upon three different occasions. And Chemist McCombs testified that the sample brought to him, on 23 October, was a "strong (R.17) . . . concentrated form of marijuana" (R.18). In addition, there were two marijuana seeds.

Appellant received three days' notice of the hearing and requested no extension; he was warned of the seriousness of the offense before he expressed the desire to represent himself; and Appellant was fully informed as to the nature of the alleged offense by the Investigating Officer's opening statement.

Possession of narcotics on American merchant vessels is considered to be "wrongful" because of the great danger, potential or actual, which it presents to seamen, passengers, ships, and cargoes. Therefore, a prima facie case is made out against a seaman by the presumption of guilt which arises from proof of possession of narcotics. The proof is so strong in this case that any slightly prejudicial evidence which is contained in the record does not constitute reversible error. The seriousness of the offense requires that the order of revocation be sustained despite Appellant's personal hardship.

ORDER

The Order of the Examiner dated at New Orleans, Louisiana, on 27 October, 1951, ~~IS HEREBY~~ **APPROVED**.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 24th day of February, 1953.